

Complaint

IN THE MATTER OF

D. G. REDMOND, DOING BUSINESS UNDER THE TRADE
NAME OF MILO BAR BELL COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1714. Complaint, Oct. 28, 1929—Decision, Feb. 10, 1931

Where an individual engaged in the manufacture and sale of adjustable dumb-bells or bar bells, together with instructions, lessons, and a course in physical culture, invited comparison of before and after pictures of a certain person, in advertising said bar bells and course in said individual's pamphlet "Health, strength, and development, How to obtain them", and stated therein that said person progressed so rapidly through their use that he "increased his chest measurement 12 inches and put 5 inches on his biceps", while growing 8 inches in height, and could not praise the system too highly, facts being that the first picture represented the subject at 14, with a height of 5 feet 3, and the second at 18, with height of 5 feet 11; with capacity and tendency to deceive prospective pupils and buyers into believing the marvelous physical development portrayed and represented due to use of said bar bells and instructions, and thereby divert trade to him from competitors:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Charles G. Gartling, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, engaged at Philadelphia in the manufacture of adjustable dumb-bells or so-called bar bells for physical exercise and training, and in the sale thereof together with instructions and mimeographed or printed lessons or courses in physical culture, to purchasers throughout the United States, with advertising falsely or misleadingly as to results attained and attainable, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in his advertisements in magazines of national circulation and in catalogues, leaflets, circulars, circular letters, and other trade literature, depicts before and after pictures of one Al Manger, inviting the beholder to contemplate the melancholy picture first presented and "the unbelievable transformation" accomplished in the second, facts being

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that the pictures either are not "of the same man, or, if so, the difference in physical development shown by said pictures can not reasonably and truthfully be represented to be the result of the physical training described,"¹ and in a pamphlet and captioned "Health, strength, and development and how to obtain them", and in other pamphlets and advertisements inserted pictures purporting to be those of persons (designated by him "Milo-built men" and "Milo graduates"), who had taken his course and used his bar bells, together with the claim that said person's superb muscular and physical development as there portrayed had been attained by them through the use of his appliances according to his courses of instruction, facts being that said development was not the result thereof and was not thereby possible of attainment, and before and after pictures of one of said persons, one John Sloan, were taken at or near the same time, difference in appearance "being due to change in dress, varying lights, difference in retouching, and other means used in the photographic art, and said person did not by reason of respondent's training increase his height to any extent, nor his chest or biceps measurements to the extent stated."²

Each of the aforesaid false and misleading representations, as alleged, "has the capacity and tendency, and has caused many persons residing in various States of the United States, to purchase respondent's appliances and courses of instruction in and on account of the belief in the truth of such representation", and respondent's said acts and practices, as charged, "are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

¹ Statements made in connection with pictures referred to, by respondent, as set forth in the complaint, follow:

"Look at the picture of Al Manger below and gasp with horror at the skinny figure and sunken cheeks. Then look at the picture of the same man, on the right, and gasp again at the unbelievable transformation.

"And now he's as strong as he looks. Mr. Manger arose from a physical condition, as shown on the left, to the coveted position of light heavyweight champion lifter of America. But even that does not seem so remarkable as his improvement in physical build.

"We do not claim he did it with a Milo Bar Bell in a couple of months' time. It takes longer than that to make such a marvelous change. Nevertheless, Mr. Manger made rapid gains and was not many months getting the physique and strength he now so proudly possesses.

"Milo has rebuilt more physical wrecks than you would think possible."

² Statements relating to the Sloan pictures, as set forth in the complaint, are quoted in "Findings," *infra*, at p. 408.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 28th day of October, 1929, issued and served its complaint against the respondent, D. G. Redmond, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to the said complaint, hearings were had before a trial examiner thereof duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for final hearing and the Commission having duly considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. G. Redmond, is now and for several years last past been engaged, under the trade name of the Milo Bar Bell Co., at Philadelphia, Pa., in the manufacture of adjustable dumb-bells, or, as called by him, bar bells, for exercise and training in physical culture, and in the sale thereof together with instructions for their use and certain mimeographed or printed lessons and courses in physical culture, to purchasers throughout the United States. He causes said merchandise, courses of instruction and lessons, when sold, to be transported by mail, express, and otherwise, from his principal place of business in the State of Pennsylvania, into and through other States of the United States in interstate commerce to the purchasers thereof at their respective points of location in the various States. In the course and conduct of his said business, respondent is and has been in competition with other individuals, partnerships, and corporations located in the United States, engaged in the business of selling courses of instruction in physical culture and apparatus and appliances to be used in physical culture, and the transportation of same in interstate commerce between and among the various States of the United States.

PAR. 2. Respondent solicits patronage by advertising in magazines of national circulation, and also by the circulation by mail and otherwise of catalogues, leaflets, pamphlets, and other trade litera-

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ture, all descriptive of the bar bells handled by respondent and also descriptive of the course of instruction and the claims made for said course of instruction by the respondent. Included in respondent's advertising matter and circulated generally throughout the United States is a pamphlet entitled "Health, strength, and development, How to obtain them", which pamphlet contains pictures of persons said to have taken respondent's course of instruction and views of respondent's bar bells, said persons being described by respondent in connection with said pictures as "Milo-built men" and "Milo graduates".

Among other pictures, said pamphlet contains two pictures, said by respondent to have been taken of one John Sloan, together with a statement in reference to said Sloan, as follows:

Compare the two photos of this pupil, the one taken at the time of his enrollment, and the other a short time after.

Mr. Sloan progressed so rapidly under our instructions, using bar bells, that he actually increased his chest measurement 12 inches and put 5 inches on his biceps. What is most astonishing is his growth in height, which increased 8 inches.

Surely this is sufficient testimony to verify the value of Milo methods. Mr. Sloan feels he can not praise the Milo system too highly and the valuable advice and attention he received from our expert in charge.

The first of said two pictures in point of time was taken when the subject was 14 years of age and 5 feet 3 inches in height. The last picture in point of time was taken when the subject was 18 years of age and 5 feet 11 inches in height. The statements made by respondent in reference to these two pictures omits any reference to these facts, and the said statements attribute the difference in height and other body measurements to the use of respondent's bar bells and respondent's course of instructions. Said representation is misleading and deceptive and has the capacity and tendency to deceive prospective pupils of respondent's course and prospective buyers of respondent's appliances into the belief that the marvelous physical development portrayed and represented by said pictures and the statements in reference thereto, was due to the use of respondent's bar bells and course of instructions, and thereby to divert trade to respondent D. G. Redmond from his competitors.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An

act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, the answer of the respondent, the testimony and briefs of counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, D. G. Redmond, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, courses of instruction and accessories thereto, or other commodities, do cease and desist from in any manner:

Representing by pictures, statements, or otherwise that physical development reasonably attributable to natural growth has been brought about by the use of respondent's bar bell or other appliance or course of instruction.

It is further ordered, That the said respondent shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
EARLE E. LIEDERMAN

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1771. Complaint, Mar. 10, 1930—Decision, Feb. 10, 1931

Where an individual engaged in sale of courses in physical culture, together with books, pamphlets, and appliances, in describing his said course, etc., in follow-up letters sent to prospective customers in response to advertisements in newspapers, magazines, and other periodicals,

- (a) Represented that course was offered to particular prospect at \$19 instead of the \$37 theretofore demanded, fact being that such pretended special offer was made to all who had not theretofore subscribed at \$37, in response to solicitation in a regularly planned and arranged series of follow-up letters; with capacity and tendency to mislead and deceive prospective pupil into believing a special, personal, and confidential price of \$19 had been offered him;
- (b) Represented aforesaid pretended reduced prices, and inclusion of books or handgrips as offered for limited time only, and called upon prospect to take advantage thereof before date specified, to be sure letter of acceptance postmarked on or before such date, to "avoid the rush and get a jump on the next fellow", as offer was "a special offer", so huge and sensational," and so "sure to be snapped up by hundreds of men", that he "could not hold it open indefinitely," and after date named could not include any of aforesaid articles, facts being he accepted offers to enroll or purchase regardless of aforesaid wholly fictitious time limitations; and
- (c) Represented and promised that individual case of each pupil was and would be given his careful consideration and that course was prepared as special course to meet needs of individual pupil, facts being that said courses consisted of printed and mimeographed lessons and other matter prepared by him for general and uniform use and circulation in the giving of instructions and were not adapted to and prepared for needs and requirements of individual pupil;

With capacity and tendency to deceive purchasing public and induce prospective pupils to enroll or purchase said merchandise believing in truth of aforesaid representations and thereby divert trade from competitors to himself:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Reeves, Todd, Ely, Price & Beaty, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged re-